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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/926,586	11/21/2001	Anna Berggren	216110USOPCT	7996
22850	7590	04/16/2007		
OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER PRATT, HELEN F	
			ART UNIT	PAPER NUMBER
			1761	

SHORTENED STATUTORY PERIOD OF RESPONSE	NOTIFICATION DATE	DELIVERY MODE
3 MONTHS	04/16/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Notice of this Office communication was sent electronically on the above-indicated "Notification Date" and has a shortened statutory period for reply of 3 MONTHS from 04/16/2007.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

09/926,586

Applicant(s)

BERGGREN ET AL.

Examiner

Helen F. Pratt

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15, 18-25 and 27-39 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15, 18-25 and 27-39 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15, 25, 3, 36, 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Connolly (US 2002/0090416 A1) in view of Kurppa (WO 98/46091).

Connolly discloses that it is known as in claim 15 to use probiotic bacteria to enhance metabolic processing from the gastrointestinal tract using acidophilus bacteria or other lactic acid producing bacteria (abstract). The probiotic organisms such as LB plantarium, and acidophilus can help repair and maintain healthy intestinal linings (page 3, para. 0032-0036 and 0037). The product can be seen as a sports drink because it can be used by athletes, (para. 001) and absent any other ingredients, could be considered a sports drink because the reference discloses a liquid and the claimed bacteria. Claim 15 differs from the reference in the use of particular micronutrients. However, Kurppa discloses a sports drink and powder as in claim 15 which contains micronutrients such as potassium chloride and magnesium sulfate and other conventional ingredients found in a sports drink (abstract and page 5, Ex. 2). Therefore, it would have been obvious to use known conventional ingredients in the composition of

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the above reference to make a sports drink because sports beverages can contain protein and lactobacilli as disclosed by Connolly.

Claims 25 is to a method of treating various gastrointestinal disturbances. However, as the claimed sports drink has been disclosed above, the various gastrointestinal disturbances would have been alleviated as the particular composition has been shown. Therefore, it would have been obvious to alleviate various symptoms by using a lactobacilli (LB) for its known functions.

Claims 37-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above combined references as applied to the above claims, and further in view of Wadstrom et al. (6599,504), Bukowska et al. (6,214,336, and Neeser et al. (6,835,376).

Claims 37-39 require particular lactobacilli with particular deposit numbers. Connolly discloses the use of LB plantarum or the other lactobacillus. Nothing new is seen in the use of a particular strain of plantarum absent anything new or unexpected. Applicants do not claim to have developed the lactobacilli themselves. Also, Wadstrom et al. disclose that it is known to use the bacteria of claim 38 as a probiotic in food and natural medicines (abstract and col. 8, lines 5-30). Neeser et al. disclose that it is known to use Lactobaccilus Rhamnosus or paracasei in food compositions for the function of preventing intestinal upsets (col. 2, lines 26-30, lines 50-55). Bukowska et al. disclose that it is known to use L. plantarum or rhamnosus, which become established in the human intestinal mucosa (col. 2, lines 63-68, col. 3, lines 13-20). Therefore, it would have been obvious to use a known LB in the claimed sports drink for their beneficial effects.

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Claims 16, 19-21, 29 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above references as applied to the above claims, and further in view of Molin (WO 89/08405) and Wilkes (Food Product Design).

Claim 16 further requires particular bacteria. Molin discloses a health drink that contains lactobacilli bacteria. The reference does not disclose the claimed particular bacteria. However, it does say that the composition is good for racehorses, which have something in common with athletes in needing particular foods to enhance endurance when running (abstract and page 2, lines 10-18). Connolly discloses the particular bacteria. Micronutrients as in claim 15 are disclosed on page 8 of Molin. Wilkes discloses that it is known to use minerals in beverages to improve athletic performance, page 1, and page 5, para. 2. The particular amounts are seen as within the skill of the ordinary worker depending on the degree of fortification required. Therefore, it would have been obvious to use lactic acid producing bacteria and micronutrients in particular amounts in the composition of the combined references because Connolly discloses that bacteria, which give a positive effect on the mucosa are known and can be used to enhance the health of athletes, and Molin discloses that it is known to use micronutrients in a health drink and sports drinks are also health drinks. Therefore, it would have been obvious to add micronutrients as disclosed by Molin to the beverage of Connolly, since they are known to be used in health drinks.

Claim 19 requires proteins and amino acids and claim 20 whey proteins. Proteins are well known in sports drinks, hence, large containers using particularly whey proteins are seen at health food stores. Connelly discloses the use of proteins in a

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beverage for athletes (col. 1, par. 0009). Also, Kurppa discloses the use of the amino acid, glutamic acid in a sports drink (page 5, lines 7, in ex. 2). Therefore, it would have been obvious to use proteins and amino acids in the claimed beverage.

Claims 21 and 29 require low glycemic type carbohydrates and optionally high glycemic index carbohydrates. This covers all carbohydrates. It would have been within the skill of the ordinary worker to use either one as the function of each type of carbohydrates in providing quick energy or long-term energy is well known. Therefore, it would have been obvious to use known types of carbohydrates in the claimed composition.

The limitations of claims 26-29 and 32 have been discussed above and are obvious for those reasons.

Claim 24 is rejected under 35 U.S.C. 103(a) as being unpatentable over the above combined references as applied to the above claims and further in view of Masuyama (WO98/05343).

Claim 24 further requires the use of freeze dried lactobacilli with micronutrients in tablet form. Masuyama (WO98/05343) discloses that it is known to lyophilize (freeze-dry) lactobacillus and to form it into tablets (page 9, lines 10-14). Therefore, it would have been obvious to treat lactobacilli as claimed in the composition of the combined references.

Claims 22, 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over the above combination of references as applied to the above claims, and further in view of Portman (6,051,236).

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Claims 22 and 23 further require additional ingredients to make a beverage. Connolly discloses the use of milk protein or any other related protein along with probiotic bacteria, which have a positive effect on the intestinal mucosa as above (page 1, para. 0007-0009). The claims do not exclude the use of even milk protein, because whey is a part of milk. Portman discloses the use of whey protein in sports beverages with ingredients within the claimed amounts except for the lactobacillus (col. 9, lines 40-65). Connolly discloses high levels of the claimed bacteria, which could amount to the amount claimed depending on the amount taken. (page 1, para. 0001 and col. 5, claim 15). Therefore, it would have been obvious to make a sports beverage containing the claimed ingredients as shown by Portman and to combine it with the beverage of Connolly because Connolly discloses that it is known to use the claimed bacteria in a sports beverage.

ALLOWABLE SUBJECT MATTER

Claim 18 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 571-272-1404. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hp 4-10-07


HELEN PRATT
PRIMARY EXAMINER